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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,546	11/28/2003	Takahiro Yamashita	IW7043372001	8335
23639	7590	09/16/2005	EXAMINER	
BINGHAM, MCCUTCHEN LLP THREE EMBARCADERO CENTER 18 FLOOR SAN FRANCISCO, CA 94111-4067			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/722,546	Applicant(s) YAMASHITA ET AL.	
	Examiner Eisa B. Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/18/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-10 are pending in this application.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1).

Dias (US' 791 B1) teaches alkaline hair bleaching and coloring compositions comprising an oxidative hair coloring agent (see col. 3, lines 58-62), oxidizing agent (oxidant) (see col. 4, line 62), alkalizing agents such as alkanolamine (see col. 7, lines 35-50), quaternary ammonium salt cationic surfactants (see col. 28, formula (XXIV) and higher fatty alcohols as claimed in claims 1 and 3-4 (see col. 47, line 33) and nonionic surfactant of polyethoxylated fatty alcohols as claimed in claims 5-6 (see col. 11, lines 13-14).

The instant claims differ from the reference by reciting the ratio of the higher alcohols to the quaternary ammonium salt cationic surfactant.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a composition by optimizing the ratio between the higher alcohols and the cationic surfactants because the reference teaches the percentage amounts of higher alcohols such as cetearyl alcohol in the composition (see cols. 51-52, Examples 10-18) and the reference also teaches 0.01% to 50% by weight of at least one hair care

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ingredient that includes surfactants (see col. 51, claim 1, (d)), and, thus, a person of the ordinary skill in the art would be motivated to optimize the ratio between the alcohols and surfactants in the composition with a reasonable expectation of success for getting the maximum effective amounts of these ingredients in the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claims 7 and 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a composition that comprise the claimed percentage amounts of the quaternary ammonium salt cationic surfactant, because the reference generally teaches 0.01% to 50% by weight of at least one hair care ingredient that includes surfactants (see col. 51, claim 1, (d)), and, thus, a person of the ordinary skill in the art would be motivated to optimize the percentage amounts of surfactants in the composition with a reasonable expectation of success for getting the maximum effective amounts of these ingredients in the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claim 2, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a dyeing composition without adding ammonia to the composition because the reference clearly teaches non-limiting examples of suitable alkalizing agents that can be used in the composition (see col. 7, lines 44-65), and, thus, a person of the ordinary skill in the art would have been motivated to select among these alkalizing agents as taught by the reference to formulate a dyeing composition that is free of ammonia as claimed and would expect such a composition to have similar properties to those claimed in the absent of contrary.

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2 Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1) in view of Tomiyuki et al. (JP 05-085918).

The disclosure of Dias (US' 791 B1) as described above, does not teach or disclose a dyeing composition comprising amino-modified polymer silicone of the formula (I) as claimed.

However, Dias (US' 791 B1) clearly teaches and suggests the use of amino-silicone polymers in the hair treating composition as conditioning agents (see col. 17, lines 6-8 and cols. 18-19).

Tomiyuki et al. (JP' 918) teaches a hair treating composition comprising amino-silicone polymer having a formula similar to the claimed formula (I) (see page 2, the upper formula), wherein the reference's formula, R1 is a methyl radical, R2 is a methyl radical or hydroxyl group and R3 is alkyl amino radical as claimed in claims 9 and 10 (see English abstract).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Dias (US' 791 B1) by incorporating the amino-silicone polymer as taught by Tomiyuki et al. (JP' 918) to make such a composition. Such a modification would have been obvious because Dias (US' 791 B1) as a primary reference clearly suggests the use of silicone polymers as conditioning agents (see col. 17, lines 6-8). Tomiyuki et al. (JP' 918) as a secondary reference clearly suggests the use of amino-silicone polymers in the hair treating composition for providing rich gloss and smoothness to hair (see English abstract), and, thus, a person of the ordinary skill would be motivated to incorporate the silicone polymers as taught by Tomiyuki et al. (JP' 918) in the dyeing composition of Dias (US' 791 B1) with a reasonable expectation of success for protecting

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and conditioning the hair, and would expect such a composition to have similar properties to those claimed, absent unexpected results.

Conclusion

3 The remaining references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Primary Examiner
Art Unit 1751

September 13, 2005